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FEDERAL COMMUNICATIONS COMMISSION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	RM-9210
	)	
Access Charge Reform	)	**CC Docket No. 96-262**
	)	
Price Cap Performance Review for Local Exchange Carriers	)	**CC Docket No. 94-1**
	)	
	)	
Transport Rate Structure and Pricing	)	**CC Docket No. 91-213**
	)	
End User Common Line Charges	)	**CC Docket No. 95-72**
	)	

MCI COMMENTS ON PETITION FOR RULEMAKING

I. Introduction

MCI Telecommunications Corporation (MCI), pursuant to Section 1.405(a) of the Commission's Rules, hereby submits its comments on the Petition for Rulemaking filed by the Consumer Federation of America (CFA), the International Communications Association (ICA), and the National Retail Federation (NRF) on December 9, 1997.

MCI fully supports CFA, ICA, and NRF's request that the Commission initiate a rulemaking to prescribe interstate access charges to forward looking cost.[1] As petitioners show, events of the past year have invalidated the assumptions underlying the Commission's choice of a "market-based" approach to access reform. In particular, as a result of LEC intransigence and restrictive court interpretations of the Telecommunications Act of 1996 (1996 Act), it is now clear that the Commission cannot

[1]Petition at 3, 9.

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rely on unbundled network element-based competition to reduce incumbent local exchange carrier (ILEC) access rates. The Commission should initiate immediately a rulemaking to prescribe interstate access charges to forward-looking economic cost.

Adoption of prescriptive measures would be pro-consumer. Without an immediate change in course, above cost access charges will continue to "increase long distance rates substantially" and suppress demand for interstate interexchange services.[2] Petitioners, who represent a broad cross-section of both business and residential consumers of telecommunications services, emphasize that the Commission should prescribe access charges to cost in order to "ensure that captive telephone customers are not subjected to bloated rates while yet another set of local competition plans are contemplated and tested."[3]

Prescriptive measures to accelerate the reduction of access charges to cost would also be pro-competition. MCI is a leader in bringing facilities-based competition to local markets, having invested over $2 billion in facilities expressly designed to provide local telephone service. Yet, interexchange carriers pursuing the capital-intensive path of facilities-based local market entry are competing with one arm tied behind their back. Uneconomic pricing of interexchange carriers' primary input -- access services -- distorts the market for interexchange services and constrains the financial resources available for interexchange carriers to pursue a facilities-based local strategy. Accordingly, one of the most significant steps the Commission can take to accelerate facilities-based competition

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[2]See Access Reform Order at ¶30.

[3]Petition at 3.

-- the only path of entry that still holds any promise for bringing competition to the local market -- is to adopt prescriptive measures that will ensure that access charges are quickly driven to forward-looking economic cost.

II. The Market-Based Approach Is Not Working

As petitioners discuss, the Commission promised in the Access Reform Order that it would turn to prescriptive measures to drive access rates down "if competition is not developing sufficiently for our market-based approach to work."[4] To date, all evidence shows that competition is not developing sufficiently to achieve the Commission's goal of reducing interstate access charges to forward-looking economic cost.

The only evidence that would demonstrate that competitive entry was reducing ILEC access rates would be a consistent pattern of below-cap pricing. The Commission's clear expectation was that, under the market based approach, competitive entry would drive ILEC prices below the cap and toward cost.[5] However, with very few exceptions, the price cap ILECs continue to price at the maximum allowed by the price cap index in every basket.[6] The reductions in access charges that have occurred since the adoption of the Access Reform Order have been due entirely to the order's limited prescriptive measures, not to any market-based pricing discipline.

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[4]Petition at 2-3 (citing Access Reform Order at ¶267).

[5]The Commission has found that interstate access rates are well above cost. Access rate declines reflecting only the rate of LEC productivity change would not move access charges any closer to forward-looking economic cost.

[6]See price cap LEC tariffs effective January 1, 1998.

Market share data shows why the ILECs have no reason to price at less than the maximum allowed. As MCI has shown previously, incumbent LECs are handling over 99.9 percent of terminating switched access minutes in most states, and over 99 percent of terminating switched access minutes in all but two states.[7] MCI's most recent data shows that, in the two states with the most access competition, competing local carriers are handling only 1.32 percent and 1.57 percent of terminating switched access minutes. At this level of competitive entry, ILECs have absolutely no reason to price below cap.

The reason for the CLECs' limited competitive presence is clear. Of the paths for entering the local market contemplated by the Act, the most promising required the extensive use of unbundled network elements. Since the Commission adopted the Access Reform Order, however, new entrants' reliance on unbundled elements has been stalled by the absence of forward-looking cost-based prices for unbundled network elements in most of the country, the inability of new entrants to obtain combinations of network elements at economic cost, and the continued foot-dragging of the incumbents in implementing operations support systems (OSS).

The Commission has, on several recent occasions, recognized that these and other significant barriers to entry continue to frustrate the development of local competition. Indeed, only two months after the release of the Access Reform Order, the Commission formed a Local Competition Task Force to address these issues. In

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[7]Joint Brief of Petitioners MCI Telecommunications Corporation, Cable & Wireless, Inc. and LCI International Telecom Corp., Southwestern Bell Telephone Co. v. Federal Communications Commission, Case Nos. 97-2866/2873/2875/3012 (8th Cir.), October 28, 1997, Appendix A.

rejecting three RBOC Section 271 filings, the Commission has consistently found significant barriers to entry.[8]

Without widespread availability of unbundled elements priced at forward-looking cost, competitive provision of switched access services is occurring only in the extremely limited situations where competitors are able to serve customers using their own facilities. Consequently, competitive entry is well short of the scale necessary to constrain ILEC access rates.

III. There is No Prospect that Competition Will Discipline Access Rates

Not only is it clear that current competitive conditions are not reducing ILEC access charges, but there is no prospect that market forces will discipline access charges to any significant degree between now and 2001, the period the Commission allotted to the market-based approach.[9] The Commission's decision to adopt the market-based approach was based on a predictive judgment that competition would develop

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[8]In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, CC Docket No. 97-137, released August 19, 1997 (Michigan 271 Order); In the Matter of Application by SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to provide In-Region InterLATA Services in Oklahoma, Memorandum Opinion and Order, CC Docket No. 97-121, released June 26, 1997 (Oklahoma 271 Order); In the Matter of Application by BellSouthCorporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in South Carolina, Memorandum Opinion and Order, CC Docket No. 97-208, released December 24, 1997 (South Carolina 271 Order).

[9]Access Reform Order at ¶48 ("Where competition has not emerged, we reserve the right to adjust rates in the future to bring them into line with forward-looking costs. To assist us in that effort, we will require price cap LECs to submit forward-looking cost studies of their services no later than February 8, 2001, and sooner if we determine that competition is not developing sufficiently for the market-based approach to work.")

sufficiently to constrain access charges.[10] Events of the past year, however, have undermined all of the assumptions upon which this predictive judgment was based.

First, shortly after the Commission adopted the Access Reform Order, the 8th Circuit struck down the Commission's pricing guidelines for unbundled network elements. In the Access Reform Order, the Commission had concluded that the Act's cost-based pricing requirement for unbundled network elements would "greatly facilitate competitive entry into the provision of all telecommunications services" and would consequently drive interstate access prices to competitive levels.[11] In many states, however, the current levels of recurring and, in particular, nonrecurring charges for UNEs do not allow for competitive entry. Without both recurring and nonrecurring charges at forward-looking economic cost, the Commission's fundamental assumption that the availability of UNEs could discipline ILEC access charges has been seriously undermined.

More recently, the 8th Circuit struck down the Commission's requirement that ILECs combine unbundled elements for new entrants. Without a requirement that the ILECs combine network elements, the scope for UNE-based competition is sharply limited. As the Commission concluded in the Local Competition Order, "requesting carriers would be seriously and unfairly inhibited in their ability to use unbundled

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[10]See Brief for Federal Communications Commission, Southwestern Bell Telephone Co. v. Federal Communications Commission, Case Nos. 97-2866/2873/2875/3012 (8th Cir.), October 16, 1997 at 98.

[11]Access Reform Order at ¶262.

elements to enter local markets" if the ILEC is not required to combine elements.[12] The 8th Circuit's decision destroys, for example, the viability of the so-called "platform" approach, which was a key strategy for new entrants to use in entering new markets or expanding their presence in a market. The availability of the platform strategy was an important factor underlying the Commission's "confidence" that unbundled elements could be counted on to constrain the pricing of access services.[13]

Finally, since the release of the Access Reform Order, it has become clear that the incumbent LECs are unwilling to provide nondiscriminatory access to their OSS functions. Even for simple resale orders, the Commission has found nonstandard interfaces, substantial differences in the flowthrough rates of the ILEC and competing carriers, and serious system deficiencies. With regard to OSS for unbundled elements, the Commission has found that these systems have been tested only to a limited extent in a commercial setting.[14]

Thus, the fundamental assumption of the Access Reform Order -- that UNEs would enable significant competition in a reasonable timeframe -- has been invalidated. Unbundled network elements are not available at forward-looking economic cost throughout the country, need not be combined by the ILEC, and cannot be ordered in a nondiscriminatory manner. Furthermore, there is no prospect that these roadblocks will be cleared in the near future. While the Supreme Court has agreed to hear the

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[12]Local Competition Order at ¶293.

[13]Access Reform Order at ¶¶32, 340.

[14]Michigan 271 Order at ¶161.

Commission's appeal of the 8th Circuit's decision, it is not expected that a decision will be handed down before the end of 1998.

Under these circumstances, the Commission can no longer reasonably predict that competition will evolve sufficiently to drive access charges to cost. New entrants' only remaining options for entering the local market are to rely entirely on their own facilities or, to a very limited extent, their own facilities in combination with UNEs.[15] Because of the substantial levels of investment required for a new entrant to pursue a facilities-based strategy, there is no question that the pace of competitive entry will be substantially less than the Commission contemplated in the Access Reform Order. As a result, the Commission could not, as it did in the Access Reform Order, express "confidence" that competition will drive access charges to competitive levels.[16]

In addition, the Commission can no longer rely on the availability of UNEs to minimize the risk of a price squeeze. In the Access Reform Order, the Commission recognized that above-cost access charges provided a substantial opportunity for ILECs providing interexchange services to engage in a price squeeze.[17] It dismissed these concerns, however, by finding that "[a]s long as an incumbent LEC is required to provide unbundled network elements quickly, at economic cost, and in adequate

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[15]Current resale discounts are insufficient for resale to be a viable strategy. More importantly, resellers of local exchange services must still pay ILEC access charges.

[16]See Access Reform Order at ¶48.

[17]Access Reform Order at ¶277 ("Absent appropriate regulation, an incumbent LEC and its interexchange affiliate could potentially implement a price squeeze once the incumbent LEC began offering in-region, interexchange toll services.")

quantities, an attempted price squeeze seems likely to induce substantial additional entry in local markets."[18] Because the Commission can no longer count on unbundled network elements being available "quickly, at economic cost, and in adequate quantities," it must adopt prescriptive measures that accelerate the transition of access charges to forward-looking economic cost.

IV. Only Prescriptive Measures Will Drive Access to Cost

The Commission stated clearly in the Access Reform Order that its goal is to reduce interstate access charges to cost.[19] The Commission found that access charges higher than cost "imped[e] the efficient development of competition" and "generate inefficient and undesirable economic behavior."[20]

MCI fully agrees with petitioners that, without a change in course, the Commission will not achieve its goal of driving access charges to forward-looking cost. Competition sufficient for the market-based approach to work has failed to develop, and there is no prospect that such competition will develop in the timeframe the Commission has allotted to the market-based approach. Under these circumstances, there is no reason for the Commission to wait until 2001 to begin developing prescriptive measures; the effect of waiting would simply be to allow the ILECs several more years of above-cost pricing. Furthermore, the Commission has made clear that it would adopt

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[18] Access Reform Order at ¶280.

[19] Access Reform Order at ¶42 ("To fulfill Congress's pro-competitive mandate, access charges should ultimately reflect rates that would exist in a competitive market.")

[20] Access Reform Order at ¶30.

prescriptive measures if competition failed to develop.[21] Because only a prescriptive approach can achieve the Commission's goal of driving access charges to cost, the Commission should, as petitioners request, initiate a rulemaking to prescribe interstate access charges to cost-based levels.

V. Conclusion

For the reasons stated herein, MCI recommends that the Commission grant CFA, ICA, and NRF's petition for rulemaking.

Respectfully submitted,
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January 30, 1998

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[21] Access Reform Order at ¶42 ("We conclude, consequently, that competition or, in the event that competition fails to develop, rates that approximate the prices that a competitive market would produce, best serve the public interest.) See also Access Reform Order at ¶¶48, 258.

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on January 30, 1998.

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CERTIFICATE OF SERVICE

I, John E. Ferguson III, do hereby certify that copies of the foregoing Comments of MCI on Petition For Rulemaking were sent, on this 30th day of January, 1998, via first-class mail, postage pre-paid, to the following:

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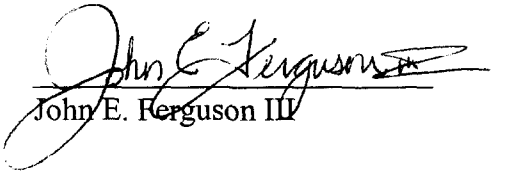

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